Chapter 8

Overcoming the Legal Challenges of News Reporting: A Case Study of a Start-Up News Corporation

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ABSTRACT

When one thinks of barriers to setting up a news corporation, one might think in terms of the costs of machinery and staffing. This case study of a start-up news corporation called Crocels News shows that the biggest cost can be in resolving legal disputes, most significantly from news articles scrutinising public bodies and their staff. This chapter investigates the difficulties faced by Crocels News in providing news content. By considering the legal correspondence received, the chapter provides insights into some of the problems all news services are likely to experience if they do not have access to the huge legal budgets of the established news corporations. The findings are particularly worrying for emerging forms of news reporting, such as citizen journalism. The chapter therefore proposes changes in statute so that case law that protects free speech is more easily enforced.

INTRODUCTION

Information it is said is power. Being able to convey such information equally requires power. When one is seeking to start up a news service one has to bear in mind that those who have power will seek to use that power to censor any criticism of them. The question therefore one must ask is that how can a new news service keep its power to scrutinise those with power when those persons often have the money to threaten litigation and convince one’s supply chain of information society service providers to interrupt services.

This chapter explores a case study of Crocels News, which started as project of The Crocels Press Limited in the United Kingdom, but has had to be transformed into a fully incorporated limited liability company in the United States – Crocels News, LLC – in order that it can continue to scrutinise public authorities, public figures and those in public office in the UK, as well as reporting US news.

DOI: 10.4018/978-1-5225-2095-5.ch008
BACKGROUND

Setting up any business is challenging, but in the case of a news corporation that will have content produced by journalists, a grasp of media law is an essential criterion (Shemberger, 2015). Understanding media law is essential to being able to conceptualise the interactions between the law, the media and society (Price, Verhulst, & Morgan, 2013).

Media Regulation in the Digital Age

The main barrier to entry for a news organisation has been the necessity to establish a reputation in order to sell printed editions of newspapers or broadcasts of news reports (Ihlström Eriksson & Kalling, 2007). This has somewhat changed in the digital age, where the existence of weblogs has made creating news websites that much simpler (St Clair, 2015). Some have argued this provides for greater pluralism in news content (Craufurd Smith, Tambini, & Morisi, 2012), whereas others have argued that barriers to entry for the news industry are actually a good thing (Lau & Wydick, 2014).

One of the problems for news providers of all levels is that many people will try all manner of ways to get content they disapprove of removed from a news website or other news service. This is often done through takedown notices, which can be letters or emails that claim a news service is infringing the legal rights of the sender or the sender’s client (Blankfield & Stevenson, 2012). Takedown notices are often used to harass content providers into taking actions to remove content they are under no legal obligation to remove (Ashley, 2009). Some see them as a double-edged sword that can both protect actual rights but at the same time stifle free speech (Doctorow, 2008). A significant number of the examples of legal issues discussed in this chapter are relating to takedown notices, which seem to be an efficient way for those claiming their rights are infringed to try to get such claims dealt with efficiently.

Politics and Policy in the Digital Age

There is often significant criticism of the news industry that they exist not to report the news in an objective way but to influence public policy and change the behaviour of the public (Antilla, 2008; Schultz & Achtenhagen, 2013). The criticisms of the way the news media have such an impact on governments and public policy through framing debates is of concern to some (Bennett, 2004; Fleming-Rife & Proffitt, 2004). There has also been criticism that news media is used more as a means of entertainment than to actually provide information in an accurate and meaningful way (Morris & Forgets, 2007). Furthermore, some are concerned of the way that national news media tends to occupy a greater part of the public consumption of news that local sources (Snider, 2000).

What is clear about the case study in this chapter is that those in positions of power within governmental bodies and public services do not like the way that the news media can be used to hold them to account. Many members of the public see journalist produced news reports as having significant credibility, and so trying to censor such reports is something public officials wanting to avoid scrutiny would want to attempt to do. Such is the truth of things that legal cases such as Derbyshire County Council v Times Newspapers Limited have been necessary to establish that public bodies have no right to sue for defamation. This also needed to be confirmed following the introduction in England of the Localism Act 2011 which set out that public bodies should have the same rights as individuals, leading to councils wanting to use the Act to sue for defamation.